IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 39 of 1992

For Approval and Signature:
Hon'ble MR.JUSTICE D.A.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

MANILAL KHODIDAS PRAJAPATI

Appearance:
MS.SIDDHI TALATI, APP. for Appellant.
MR HL JANI for Respondent No. 1

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 17/11/2000

ORAL JUDGEMENT

#. The State of Gujarat has come in appeal against the order of acquittal passed by the Joint Judicial Magistrate, First Class, Gandhinagar on 30.03.1991 acquitting the accused respondent for alleged offence punishable under section 2(m) read with section 7(1) of the Prevention of Food Adulteration Act.

#. On 19.09.1986 the Food Inspector Shri M.H.Patel purchased groundnut oil in presence of panch witnesses as well as his Assistant Shri Raghubhai Chauhan from one Shri Manilal Khodidas Prajapati, Prop.Brahmani Kirana Store, Adalaj. After following the requisite formalities

prescribed under the Act and Rules, one part of the sample was forwarded on 20.09.1986 to the Regional Food Laboratory, Rajkot and the remaining two parts of the sample were sent to Local Heath Authority, Ahmedabad on the same day. On receipt of the report of the Public Analyst that the aforesaid sample of groundnut oil was adulterated in as much as the same was at a variance from the standard laid down, permission was sought to launch prosecution against the accused and on receipt of such consent the accused was prosecuted under the provisions of section 2(m) read with 7(1) of the Prevention of Food Adulteration Act.

#. After taking into consideration the various documentary evidence as well as statements of different persons the Trial Court has held that the prosecution has not been able to establish its case against the accused and accordingly acquitted the accused. The reasons for not accepting the prosecution case are : Firstly, that Shri P.M.Patel the Public Analyst who carried out the analysis of the sample was not empowered to act in view of the fact that the notification under which he was appointed as Public Analyst had been superseded by the subsequent notification, and secondly that the consent granted by the Local Health Authority did not contain necessary reasons.

#. Taking up the second reasoning first, it can be stated that the same is no longer the correct view of the provisions of the Act and for this purpose, there are two direct decisions of this Court as well as one decision of the Apex Court and hence, we need not elaborately deal with this aspect of the matter.

[1] 1999 CRI. L.J. 468
State of Maharashtra Vs. Gopalprasad Govindprasad Agarwal.

[2] 1988(1) GLR 214
State of Gujarat Vs. Imtiyaj Haji Abdul Sattar.

[3] 1991(2) GLH 214
Harshvadan Dahyalal Sevak Vs. Nareshbhai Devandas Vaghvani and another.

#. Shri P.M.Patel had been appointed vide notification dated 06.03.1984 as Public Analyst for the entire State of Gujarat except Vadodara district. The sample was forwarded to him on 20.09.1986 and was

received by him on 01.10.1986. The report of the Public Analyst Shri P.M.Patel is dated 08.10.1986 and was forwarded to Food Inspector Shri M.H.Patel on 20.10.1986. Now between the date of appointment of Shri P.M.Patel i.e. 06.03.1984 and the point of time when the sample was obtained and sent for analysis i.e. in Spetember,1986, the State Government vide its notification dated 06.09.1985 appointed one Shri I.M.Desai as Public Analyst for the entire State of Gujarat and in the said notification it was specifically stated that all the earlier notifications stood superseded. In light of this position, the Trial Court has come to the conclusion that when Shri P.M.Patel carried out the analysis of the sample of the groundnut oil he was no longer Public Analyst notified to carry out the said duty and as such his report cannot be taken on record and into consideration for the purposes of determining as to whether the accused were in possession of and dealing in adulterated groundnut oil. In absence of valid report by the Public Analyst it is not possible to hold the accused guilty of the alleged offence.

#. At this juncture, Ms.Siddhi Talati, learned APP for the appellant stated that Shri P.M.Patel is functioning as Public Analyst even today, and hence it cannot be said that he was not holding the post of Public Analyst on the day when he tendered the report in question. Be that as it may, without entering into the controversy as to whether Shri P.M.Patel was Public Analyst or whether he was not holding that post on the day he carried out the examination and tendered the report, the case of the appellant fails on another aspect of the matter.

#. On the assumption that Shri P.M.Patel was the notified Public Analyst on the day he tendered the report; if the report is taken into consideration, the Trial Court has found that it does not specify whether the sample of the groundnut oil was of inferior quality i.e. below prescribed standard and further that it was injurious to health. The Trial Court has further held that the report has to specifically state that the food sample does not conform to the prescribed standard as per the provisions laid down under the Act and that such item should be injurious to health. In the report under consideration it is only stated that the sample of groundnut oil does not conform to the standard of provisions laid down under the provisions of Food Adulteration Rules,1955. The report is silent as to whether such sample is injurious to health. Moreover in the deposition, Shri P.M.Patel has specifically agreed

that the report is silent as to the fact that the groundnut oil is not injurious to health or that it is injurious to health. In view of this, relying upon the ratio of 1976 SCC (Cri.) 30, the Trial Court has come to the conclusion that such report cannot come to the aide of prosecution and the prosecution fails to prove its case beyond reasonable doubt and the accused cannot be held guilty of the offence charged with.

#. I do not find any reason to take a different view of the matter in so far as this aspect of the matter is concerned as nothing has been shown to us on behalf of the appellant as to how the aforesaid finding recorded by the Trial Court based on facts and circumstances of the case as well as appreciation of evidence on record is incorrect in any manner.

#. For the aforestated reasons the acquittal order of the Trial Court is upheld and the appeal is dismissed.

(D.A.Mehta, J)
m.m.bhatt